
Nova Scotia’s Court of Appeal Rules An Insurer Cannot Benefit From Absolute Discharge Of A Bankrupt Insured

Reported Case:	Buchanan, Re
Citation:	2007 NSCA 68
At Issue:	Whether an order absolutely discharging a bankrupt operates as a discharge of a claim against the bankrupt where indemnity insurance may be available to respond to claims against the bankrupt.
The Court:	Nova Scotia Court of Appeal
Judgment Rendered:	June 6, 2007
Factual Summary:	Plaintiff company contracted with homeowner to install oil tank, later subcontracting the work to the defendant. After the discovery of a leak, the plaintiff company remediated the homeowner’s property and brought action against the defendant and its insurer. Following the defendant’s assignment in bankruptcy, plaintiff company was granted an order to continue action against defendant. Defendant subsequently applied for a conditional discharge order to which the plaintiff company consented. The order provided that, pending the issuance of an absolute order for discharge, the plaintiff company could apply for a declaration as to the effect, if any, of the discharge of the defendant on the plaintiff company’s claims against it. No application was made prior to the issuance of the absolute order for discharge, but following its issuance, the plaintiff company did apply for such a declaration.
Lower Court:	The bankruptcy judge granted the plaintiff company’s application finding that the discharge order did not affect the plaintiff company’s right to proceed against the bankrupt in an effort to obtain judgment against the bankrupt, which might be enforced against the bankrupt’s insurer.
Appellate Decision:	The bankruptcy judge did not err in granting the application. Despite the issuance of the absolute discharge order, the plaintiff company is not precluded from continuing its action against the bankrupt in an attempt to access the insurance proceeds. Such a conclusion accords with the purposes of the <i>Bankruptcy and Insolvency Act</i> . Policy reasons also support this conclusion. Were the plaintiff company not able to continue, the insurer would garner a windfall by being permitted to obtain a financial benefit for the absolute discharge of its own insured. Appeal dismissed.